



March 20, 2003

Ms. Gail Cooper
U.S. Environmental Protection Agency
Office of Solid Waste (5304 W)
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

**Re: EPA Hazardous Waste Listing Determination
for Waste Generated from Production of
Specific Color Pigments and Dyes**

Dear Ms. Cooper:

I am writing on behalf of the Color Pigments Manufacturers Association, Inc. ("CPMA") to follow up on several items discussed in our meeting of January 15, 2003 with you and representatives of the Environmental Protection Agency ("EPA") Office of Solid Waste.

The CPMA is an industry trade association representing color pigment companies in Canada, Mexico and the United States. CPMA also represents small, medium and large color pigment manufacturers throughout Canada, Mexico and the United States, accounting for 95% of the production of color pigments in these countries. Color pigment manufacturers located in other countries with sales in Canada, Mexico and the United States, and suppliers of intermediates, other chemicals and other products used by North American manufacturers of color pigments are also members of the Association. Color pigments are widely used in product compositions of all kinds, including paints, inks, plastics, glass, synthetic fibers, ceramics, color cement products, textiles, cosmetics and artists' colors.

We are reviewing the EPA information request, entitled "Organic Dyes and Pigments Listing Determination Azo, TAM and Anthraquinone Wastes, Selected Data of Interest for the Economic Assessment and Regulatory Flexibility Screening Analysis." This information request was sent to us with an E-Mail memorandum from Ms. Gwen DiPietro, dated February 20, 2003. This memorandum includes waste quantities as solids and liquids from all potentially impacted manufacturers categorized by facility size, or alternatively, average waste quantities for all facilities expressed as waste to product ratios along with updated product pricing information. EPA also requests that any response from the CPMA should include all information from all of the facilities on EPA's list of relevant facilities for the dye and pigment listing determinations. Although CPMA represents a significant portion of the facilities on this list, CPMA does not represent dye products or certified food, drug and cosmetic colors. Therefore, information from facilities dedicated to either dye products or certified color products would be difficult for us to obtain, particularly, in a short period of time.

The February 20, 2003 memorandum requests that CPMA provide this economic analysis data by March 28, 2003. Given the scope of the request and EPA's requirement that information from non-members be included concerning dye and FD&C products, this extremely short deadline is not feasible.

Since EPA indicates that rulemaking activity including the economic assessment will be underway until at least August 14, 2003, with a proposal to be signed November 10, 2003, the requirement that CPMA respond by March 28, 2003 would appear unnecessarily short. Under the circumstances, providing EPA with the requested information will be, at best, difficult for CPMA, particularly since much information would have to come from non-CPMA companies.

In any event, a very important part of EPA's risk assessment and economic analysis that would greatly assist our members in analyzing both the potential impact of any waste listing and a response to EPA's information request, is the list of constituents of concern discussed again at our meeting January 15, 2003. EPA indicated that it would consider providing CPMA with this list. We have requested this information numerous times, both in this new listing determination and in the context of the prior listing determinations, which were published as proposed rules in 1994 and 1999. Had CPMA and our members been able to obtain this information when requested several times between 1992 and 1994, many of the errors and much of the confusion associated with these two proposals could have been avoided. See for example, CPMA's letter to Michael H. Shapiro dated September 21, 1994, Appendix F, CPMA comments dated December 14, 1995, which stated in part:

"It must further be noted that despite repeated requests from CPMA over a number years, EPA has yet to provide industry with a listing of waste constituents which EPA has found to be potentially hazardous and at which level (apart from a reasonable explanation of how these quantities are derived). The information CPMA representatives were given in an August 11, 1994 letter provided generic descriptions such as "wastewaters from production of AZO pigments". This description covers hundreds of batch manufacturing processes. However, the constituents listed as the basis for this generic classification are neither used nor found in the vast majority of AZO pigment manufacture."

The importance of the list of constituents of concern to our members and to the EPA's listing determination process cannot be underestimated. We believe that errors in EPA's new effort could be avoided if this information were available now. Many of the omissions, errors and gross overestimates which pervaded the 1994 and 1999 listing determinations could have been avoided if our members had been able to ascertain which specific potential waste constituents EPA was concerned with and under what circumstances and concentrations. These issues include:

- Overbroad regulation of hundreds of products which do not appear to contain the constituents of concern.
- Unnecessary use of Confidential Business Information not related to the limited process and products which raised concern.

- Unnecessary regulation, since many of the constituents might have been modified or removed from wastestreams without the need for a catch-all waste listing determination.
- Ongoing confusion between organic dye and color pigment products and the processes and the facilities producing these products.
- Available information regarding specific constituents, their use, necessity, treatment and safety, both in process and use, could have been assembled and provided to EPA.

An example would be EPA's assumptions regarding the acetoacetanilide ("AAA") family of intermediate compounds, AAA, AAOA and AAOT. Had CPMA been aware that this compound was a concern, information including a complete SIDS Dossier could have been provided to EPA. EPA cited AAA and related compounds as the primary reason for its listing of wastewaters from Azo pigments as hazardous waste in 1994. These same compounds were dropped from a related 1999 risk analysis because the available information did not support the risk assumed. Again, much of this could have been avoided if our members had been provided with the specific compounds EPA had identified as being of concern to its risk assessment.

This has obvious implications for EPA's economic analysis. If the determination correctly addresses the risk, or lack thereof, then the economic impact will be better defined. Additionally, since the wastes which pose a concern, or lack thereof, are better defined, the cost of treating those wastes will be accurately defined.

Therefore, we again request that EPA provide us with a list of those waste constituents which EPA considers significant to its risk assessment, and, as a result, significant to the economic assessment as well. We believe that this information will greatly sharpen the focus and utility of our meeting at the end of March and allow us to provide appropriate waste stream information.

It is at least possible that some of the constituents of concern in this listing determination can only be documented by EPA using information which is claimed by CPMA to be Confidential Business Information ("CBI") in Magruder Color Company, Inc and CPMA v. U.S. EPA, consolidated with Sun Chemical Corporation v. U.S. EPA, U.S. District Court for the District of New Jersey, Newark, New Jersey, Civil Action No. 94-5768 (NHP). If EPA finds that the list of constituents of concern cannot be provided to our members without resolving this dilemma, given EPA's desire to move forward with the new listing determination, this would be another reason to reach a settlement of the CBI litigation as soon as possible. I have requested our attorneys to discuss this with your attorneys.

Ms. Gail Cooper
U.S. Environmental Protection Agency
March 20, 2003
Page 4

Please call if there are any further questions or comments. I will contact you or members of your staff in the next few weeks to finalize plans for our meeting in March.

Sincerely,

A handwritten signature in black ink, appearing to read 'JLR', followed by a horizontal line and a stylized 'M'.

J. Lawrence Robinson
President

JLR:jldd

Sent via Fed Ex to: Ms. Gail Cooper
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